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3 **IN THE UNITED STATES DISTRICT COURT**
4 **DISTRICT OF ARIZONA**

5 A.D. and C. by CAROL COGHLAN
6 CARTER, their next friend;
7 S.H. and J.H., a married couple;
8 M.C. and K.C., a married couple;
9 for themselves and on behalf of a class of
10 similarly-situated individuals,

11 Plaintiffs,

12 v.

13 KEVIN WASHBURN, in his official
14 capacity as Assistant Secretary of BUREAU
15 OF INDIAN AFFAIRS; SALLY JEWELL,
16 in her official capacity as Secretary of
17 Interior, U.S. DEPARTMENT OF THE
18 INTERIOR;
19 GREGORY A. McKAY, in his official
20 capacity as Director of the ARIZONA
21 DEPARTMART OF CHILD SAFETY,

22 Defendants.

No. 2:15-CV-01259- PHX-NVW

**STIPULATION FOR STAY OF
DEFENDANTS' DEADLINE TO
FILE ANSWER OR RESPONSIVE
MOTION (Second Request) AND
STAY OF DEADLINE TO
RESPOND TO MOTION FOR
CLASS CERTIFICATION (First
Request) AND JOINT MOTION
FOR STATUS CONFERENCE**

(Assigned to The Honorable Neil V.
Wake)

23 Pursuant to Rule 7(b)(1), Federal Rules of Civil Procedure, State Defendant
24 Gregory A. McKay, Federal Defendants Kevin Washburn and Sally Jewell, and
25 Plaintiffs move for a status conference to address scheduling disagreements and
26 stipulate to stay Defendants' pending deadlines to (1) answer or file a responsive
27 pleading to Plaintiffs' Complaint, which deadline is currently September 8, 2015; and
28 (2) to stay Defendants' respective deadlines to respond to Plaintiffs' Motion for Class

1 Certification. Such stay will remain in effect until this Court resolves scheduling
2 disagreements. Good cause supports this stipulation and motion as follows:

3
4 Plaintiffs' filed a Complaint against Defendants on July 6, 2015. ECF No. 1.
5 That Complaint challenges the constitutionality of the Indian Child Welfare Act, 25
6 U.S.C. § 1901 *et seq.*, on multiple grounds. *Id.* In addition to challenging this thirty-
7 seven year old statute, it seeks review under the Administrative Procedure Act of the
8 Bureau of Indian Affairs' Guidelines for State Courts and Agencies in Indian Child
9 Custody Proceedings, 80 Fed. Reg. 10,146 (Feb. 25, 2015). *Id.* Finally, it seeks
10 certification of a class of plaintiffs encompassing all "off-reservation Arizona children
11 with Indian ancestry" and "off-reservation non-Indian Arizona-resident foster,
12 preadoptive, and prospective adoptive parents in child custody proceedings" involving
13 Indian children. *Id.* at ¶ 30.

14
15 Defendants currently are obliged to file an answer or responsive pleading to
16 Plaintiffs' complaint on September 8, 2015.¹ On August 21, 2015, before an Answer or
17 other responsive pleading was due, Plaintiffs filed a Motion for Class Certification
18 (ECF No. 22) to which the Federal Defendants' response is due September 8, and State
19 Defendant's response is due September 17.²

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24 ¹ Defendant McKay's deadline to answer or otherwise respond was originally July 31,
25 2015, but this Court so-ordered a stipulation extending that deadline to coincide with
26 Federal Defendants' deadline of September 8, 2015. ECF No. 21. The Federal
27 Defendants have not previously requested any extensions of any deadlines in this case,
28 their obligation to Answer having been originally September 8, 2015.

² Under the LRCiv 7.2(b), Defendants have fourteen days to respond, but the Federal
Defendants could not be electronically served because they have not yet appeared and

1 On September 2, 2015, counsel for all parties conferred by phone at Defendants'
2 request, and Defendants proposed an orderly briefing schedule for filing motions to
3 dismiss all claims in Plaintiffs' Complaint. The proposed schedule involved:
4

- 5 1. Filing of Defendants' opening briefs on October 16, 2015;
- 6 2. Filing Plaintiffs' response briefs on November 13, 2015; and
- 7 3. Filing Defendants' reply briefs on December 4, 2015.

8 Defendants further proposed that their deadline to respond to the class
9 certification motion be stayed until their motions to dismiss are resolved. That is
10 because Defendants expect all claims in this case to be dismissed (thereby eliminating
11 the need for addressing class certification) or to be reduced in number (thereby
12 impacting the scope of class certification). Further, the class certification motion is
13 premature because discovery is needed. Without such discovery, Defendants cannot
14 ascertain whether the proposed class comports with the requirements of Fed. R. Civ. P.
15 23, including determining the appropriateness of the proposed class representatives and
16 class counsel. Therefore, Defendants proposed that the deadline for responding to
17 Plaintiffs' motion for class certification be stayed pending resolution of Defendants'
18 motions to dismiss.
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23 Defendant McKay required service by mail as well because the motion was supported
24 by declarations subject to a pending motion by Plaintiffs' to seal and thus not available
25 on the ECF System. Thus, adding three days for service by mail, Fed. R. Civ. P. 6(d),
26 combined with the fact that September 7 is a federal holiday, the deadline for the
27 Federal Defendants falls on September 8. The declarations supporting Plaintiffs'
28 Motion for Class Certification (ECF No. 22), which were lodged under seal, were
ultimately served by hand on State Defendant McKay on September 3. Therefore, under
LRCiv 7.2(b), State Defendant's response is due September 17.

1 Plaintiffs did not offer a counter-proposal but indicated that the parties should
2 approach the Court to resolve scheduling issues. Plaintiffs further provide:
3

4 Plaintiffs oppose the proposed schedule in light of the previously
5 stipulated extension of time for responsive pleadings and because the need
6 for relief in this case is urgent both for the individual plaintiffs and the
7 proposed class members. They will request that the Court set prompt
8 deadlines for responsive pleadings, dispositive motions, and discovery.

9 Plaintiffs agreed to stipulate to a stay of Defendants' pending response deadlines
10 until the scheduling issues could be resolved by the Court at the requested status
11 conference. Undersigned counsel avows that the parties have entered into this
12 stipulation in good faith and not for purposes of delay and that the stipulated stay best
13 serves the administration of justice in this case.

14 Accordingly, having been unable to secure Plaintiffs' consent to Defendants'
15 proposed schedule, Defendants, in accord with Plaintiffs' wishes, hereby respectfully
16 request that the Court:
17

- 18 1. Approve the stipulation to stay Defendants' September 8 deadline to respond
19 to Plaintiffs' complaint until this Court can establish a suitable schedule for
20 briefing motions to dismiss at a status conference;
21
- 22 2. Approve the stipulation to stay Defendants' respective deadlines to respond to
23 Plaintiffs' Motion for Class Certification until this Court can establish a
24 suitable schedule for briefing motions to dismiss at a status conference;
25
- 26 3. Hold a status conference, allowing parties to participate telephonically if
27 necessary, at the court's earliest convenience.
28

1 Counsel for all parties have reviewed the proposed form of order attached
2 to this stipulation, and each approves its form and content.

3 A proposed form of order is attached.
4

5 RESPECTFULLY SUBMITTED this 3rd day of September, 2015.
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7 s/_____
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9 Ragu-Jara Gregg
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12 Law and Policy Section
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12 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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**IN THE UNITED STATES DISTRICT COURT
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A.D. and C. by CAROL COGHLAN
CARTER, their next friend;
S.H. and J.H., a married couple;
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capacity as Director of the ARIZONA
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Defendants.

No. 2:15-CV-01259- PHX-NVW

ORDER

The Court having considered the parties' stipulation to stay deadlines and motion
for status conference, and good cause appearing,

IT IS ORDERED the stipulation is **APPROVED**.

IT IS FURTHER ORDERED the deadline for Defendants to answer or
otherwise respond to the complaint is stayed until this Court at a status conference
establishes a suitable deadline; and

IT IS FURTHER ORDERED the deadline for Defendants to respond to
Plaintiffs' motion for class certification is stayed until this Court at a status conference
establishes a suitable deadline; and

1 **IT IS FURTHER ORDERED** that the parties shall appear before this Court for
2 a status conference to be set at a time convenient to the Court.
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